

# Liability of Police Authorities and the Decision in *Tindall v Chief Constable of Thames Valley Police*

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Author: Jack Stuart

On 23 October 2024, the Supreme Court handed down its decision in *Tindall v Chief Constable of Thames Valley Police* [2024] UKSC 33. The decision is the latest in many higher court decisions regarding the liability of police authorities to the public where they suffer injury.

## Liability of Public Authorities: A Reminder of the Key Law

It has been long established that a public authority does not attract liability in negligence for failing to adequately carry out their public functions. This was made clear in the context of police authorities in *Hill v Chief Constable of West Yorkshire Police* [1989] AC 53, the two key reasons being:

- That there is insufficient proximity between police authorities and members of the public, as to impose a duty of care; and
- That there are policy reasons for not imposing a duty of care on public authorities as potentially wide as this. In other words, there is a desire to avoid 'opening the floodgates'.

The higher courts have stuck firmly to this principle. More recently, the Supreme Court affirmed this rule in *Michael v Chief Constable of South Wales Police* [2015] AC 1732, in the context of a 999 caller who mistakenly under-prioritised the urgency of a call. Lord Toulson explained at [114] that:

*It does not follow from the setting up of a protective system from public resources that if it fails to achieve its purpose, through organisational defects or fault on the part of an individual, the public at large should bear the additional burden of compensating a victim for harm caused by the actions of a third party for whose behaviour the state is not responsible. To impose such a burden would be contrary to the ordinary principles of the common law.*

There have been some narrow, exceptional departures from this position. For example, in *Swinney v Chief Constable of Northumbria Police* [1997] QB 464, it was held that an assumption of responsibility by the police may lead to liability in negligence. Such an assumption was held as arguable in that case, because officers gave the Claimant an “*undertaking of confidentiality*”.

Critically, the principle from *Hill* only applies to omissions by police authorities, i.e. a failure to benefit the public. If there is a positive act which causes injury, then a duty of care is owed. So much was made clear by the Supreme Court in *Robinson v Chief Constable of West Yorkshire Police* [2018] AC 736.

## Factual Background

In this case, the Claimant’s late husband, Mr Tindall, died in a road traffic accident, and the Claimant pursued a claim as her husband’s widow and the administratrix of his estate.

Mr Tindall suffered his accident in the early hours on a stretch of road covered with black ice. Another driver had lost control of their car, crossing into Mr Tindall’s path and colliding with his vehicle. Mr Tindall sadly passed away on impact, or shortly afterwards.

Before this incident, there was an earlier incident on the same area of road, involving Mr Kendall. After losing control of his vehicle on the same patch of ice, Mr Kendall stood waving at passers-by to slow down other vehicles and alert them to this danger. Mr Kendall called the emergency services. Police officers attended and placed a ‘police slow’ road sign on the road. Once Mr Kendall had departed for hospital, the police removed their ‘police slow’ sign and left the scene.

A police disciplinary tribunal held that the officers should have done more. Further, at an “*Article 2 inquest*”, the jury found that appropriate signs should have been placed; gritters should have been requested and the police should have stayed at the scene until the gritters arrived; the road should have been closed; and appropriate support should have been requested.

## The Claim

Mrs Tindall brought proceedings against the police authority, and an application was made to strike out her claim. At first instance, Master McCloud refused that application, ruling that the question of whether the officers had made matters worse was a factual question for Trial.

That decision was overturned by the Court of Appeal. Mrs Tindall appealed to the Supreme Court.

# The Appeal

The Claimant's key argument was that the police had essentially 'made matters worse'. But for the arrival of the police, it was argued, Mr Kendall would have continued to wave at passers-by in an attempt to warn them of the dangerous ice. The Claimant argued that, by arranging for Mr Kendall to leave the scene and by leaving the scene themselves without allowing any signage to remain, the police had made matters worse before Mr Tindall's accident.

The Claimant drew a comparison with the comments of Stuart-Smith LJ in *Capital & Counties plc v Hampshire County Council* [1997] QB 1004, in particular his suggestion at p. 1034 that a local authority who negligently destroyed a temporary flood-blocking wall would *prima facie* be liable for damage caused thereafter.

Alternatively, the Claimant argued that the police had taken control of the scene on their arrival, before then relinquishing control without having taken appropriate steps. This was described as the 'interference principle'.

# The Decision

Giving the unanimous judgment of the Supreme Court, Lords Leggatt and Burrows dismissed Mrs Tindall's appeal, affirming the strike-out of her original claim.

In doing so, the court treated Mrs Tindall's two key arguments as being one and the same, in that both arguments amount to an allegation that the police 'made matters worse'. In that regard, the court concluded at [56] of its decision that the 'interference principle' was:

*simply a particular illustration or manifestation of the duty of care not to make matters worse by acting in a way that creates an unreasonable and reasonably foreseeable risk of physical injury to the claimant. There is no reason in principle why the conduct which creates this risk should not consist in acts which are foreseeably likely to have the effect of putting off or preventing someone else from taking steps to protect the claimant from harm.*

Moreover, the court confirmed at [58] that:

*in line with the well-established approach to establishing any duty of care, for a duty of care to arise it is necessary to show that the defendant knew or ought to have known (ie that it was reasonably foreseeable) that its conduct would have this effect.*

The court agreed that the police's actions had caused Mr Kendall to cease his waving towards passers-by, with which he would otherwise have continued.

The Claimant's case failed, however, on a failure to establish the required actual/constructive knowledge of the police. The court found that the originally pleaded claim did not allege that the police were aware that, before calling 101, Mr Kendall had been attempting to warn other motorists of the ice hazard, or that Mr Kendall said anything to suggest that he intended to make such attempts. Moreover, it was held that there was insufficient evidence to maintain such an allegation.

Finally, the court rejected any suggestion that the police had assumed responsibility by taking control of the accident scene.

## Comment

This decision affirms the previously long-standing approach taken by the higher courts, that imposing a duty of care on police authorities in negligence is very much the exception rather than the rule. The distinction has been maintained between an omission or failure to benefit (which generally does not create a duty of care) and positive acts (which can create a duty).

Regarding any 'assumption of responsibility', the court has helpfully clarified the nature of this question in such cases as this, describing it at [75] as '*the idea that a person may, by words or conduct, expressly or impliedly promise (or undertake or give an assurance) to take care to protect another person from harm*'.

Interestingly, the court has given judicial approval of the 'interference principle' relied upon by the Claimant. Although finding it did not apply in this case, the Court approved the statement of the principle from McBride and Bagshaw's *Tort Law*, 6<sup>th</sup> ed. (2018), at pp. 213-217, that:

*[I]f A knows or ought to know that B is in need of help to avoid some harm, and A knows or ought to know that he has done something to put off or prevent someone else helping B, then A will owe B a duty to take reasonable steps to give B the help she needs.*

Finally, it will not have escaped readers' attention that the court's decision was based heavily on evidential difficulties and the original pleaded case. No doubt Claimant practitioners will have this in mind if advancing any such claims in the future. Particular attention in pleading how there has been an assumption of responsibility, and the alleged actual/constructive knowledge of officers who are said to be assuming responsibility, is encouraged.

All in all, this decision solidifies the approach to be taken in claims of negligence against police authorities, signalling no

strong desire from the courts to broaden the scope for liability in the future.

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